Research Proposal of the Thesis Entitled

AGREEMENTS IN RESTRAINT OF TRADE UNDER THE INDIAN CONTRACT ACT: A CRITICAL ANALYSIS OF THEIR INFLUENCE ON THE ENFORCEMENT OF NEGATIVE COVENANTS IN EMPLOYMENT CONTRACTS

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1. Introduction

"It is true, that a Law of Contract based on cause will always be an arbitrary and inelastic law; but it is a kind of law with which some great nations are satisfied at the present day." - Edward Jenks[1]

Human civilisation and commercial activity has given birth to the concept of contract which has been carried forward over decades. As time progresses, the system of governance has collated those concepts into principles and customs which have in turn been codified into the statue of law. The present laws instituted for contract are based on the traditional and customary contract which is also known as general contract, whereas the new era of dynamic commercial relationship has created a new form of contract known as advanced form of contract. These advanced contract are simply contracts where the principles of the contract law are applicable but due to the need of the technicalities and application of specific subject jurisprudence, this form of contract is more specific in nature. Employment contracts are also a form of the advanced contract and are a result of evolution of the advanced need of commercial activity which has also given birth to new issues and challenges to transform the traditional general contractual laws to the advanced specified laws.

The evolution of employment cannot be traced, but it is said that mankind often required organised work in farming, fishing etc.[2] The relationship of the employer and the employee in the ancient and the pre-industrial era was mostly governed by the master- servant relationship and there were no formal structured laws governing employment terms and conditions. The industrial era has changed the dependence of the employer on the employee and the industrial revolution and mass production has created a need of the skilled

[1] "Edward Jenks Quote," *A-Z Quotesavailable at*: https://www.azquotes.com/quote/1174184 (last visited July 18, 2023).
[2] Ibid

employees. Over the period of time the skilled employee help employer to developed new products, services.

The employment and the services of the skilled person transacted globally with the birth of the United Nations, International Labour Organisation and other bodies. India opened its gate for to foreign direct investment and freed its economy. As per the World Development Indicators of the World Bank, there are 508.8 million (50.8 crore) people working in different sectors of India, and every year 5-7 million people are entering the Indian work force[3]. Over the years, industrial and service sector has seen a constant growth over the year, 24.69% workforce is working in the industrial sector and 31.5 % workforce is working in the service sector in 2018. Employment dynamics in the commercial activity is also constantly changing due to shift from agricultural activities i.e. unskilled labour to industrial and services industry i.e. skilled and semi-skilled labour[4].

This huge number of 508.8 million (50.8 crore) people working in India are directly or indirectly a part of employment contract in India , out of which 94% people are working in unorganised sector [5]. With 94% of the workforce being employed in the unorganised sector, it contributes to 45% of the total output. Within this sector, 48% of workers are involved in non-agricultural activities, generating 30% of the GDP. Comparatively, the organised sector employs 6% of the workforce but produces a significant 55% of the GDP. As a result, the productivity in the non-agricultural unorganised sector stands at 0.63 times the average productivity, while the organised sector boasts a much higher productivity rate of 9.17. In essence, this translates to a remarkable

[3] Sabina Dewan, "Only 4.75 Million Join India's Workforce Annually, Not 12 Million As Claimed," 2018*available at*: https://www.indiaspend.com/only-4-75-million-join-indias-workforce-annually-not-12-million-as-claimed-70548/ (last visited July 18, 2023).

[4] "India - Distribution of the workforce across economic sectors 2021," *Statistaavailable at*: https://www.statista.com/statistics/271320/distribution-of-the-workforce-across-economic-sectors-in-india/ (last visited July 18, 2023).

[5] Supra 3

14.56 times more output per worker in the organised sector compared to the non-agricultural unorganised sector.[6]

Looking at the current Indian market, employee in organised sector do have written contracts in form of appointment letter or employment contract or other type of written condition, whereas this terms and condition are not mutual terms and conditions which resulted into dispute. Dispute is constant between the employer and employee due to unclear terms and negative covenants which are agreed by the employee in need of the employment but at the time of leaving the employment negative covenants usually resulted in to dispute, whereas if the employment contract is executed between the parties, then also the execution of the negative covenants in the employment contract is a big task for the Indian courts. Both the employee and employer are not provided with any support from specific statutes or laws which deal with negative covenants in employment contracts or which ensure the smooth functioning of the relationship between the employer and employee while separation. In the current scenario, the Indian employment terms and conditions are mostly governed by The Indian Contract Act 1872, as stated by the Supreme Court of India in Bank of India and Ors. Vs. O.P. Swaranakar[7] etc.

"A contract of employment is also a subject matter of contract. Unless governed by a statute or statutory rules the provisions of the Indian Contract Act would be only applicable at the formulation of the contract as also the determination thereof."

A contract can take the form of express or implied agreement. In many instances, the contract's terms are documented in writing, such as in a letter of appointment for middle or lover-level employees, and in a contract of employment for higher-level (management level) employees. However, it is not always feasible to anticipate and include every possible condition in writing,

[6] "Three Notes of Caution as India Celebrates Its GDP Growth," *The Wireavailable at*: https://thewire.in/economy/gdp-growth-2023-high-economy (last visited July 18, 2023).
[7] AIR 1 2002 SC 858

especially in long-term relationships. Consequently, certain rights and obligations between parties may be understood or implied in the contract, even if they are not explicitly stated. Identifying the specific terms that can be implied, focus will be on whether negative covenants can be implied in a contract of employment.[8] There are certain negative covenants like Transfer, Incentive, Non- Disclosure, Non-Soliciting, Non – Compete, Jurisdiction etc, in employment contracts which are regulated by various employment laws like The Industrial Disputes Act 1947, The Industrial Employment (Standing Orders) Act 1946 , The Code on Wages 2019 etc. . These are also governed by the judgments of the Supreme Court and High Courts like Niranjan Shankar Golikari v. Century Spg & Mfg Co. Ltd[9], Percept D'Mark (India) Pvt. Ltd. v. Zaheer Khan & Anr.[10], Hi Tech Systems and Services Ltd. v. Suprabhat Ray[11], Desiccant Rotors International Pvt. Ltd v Bappaditya Sarkar & Anr[12] , FL Smidth Pvt. Ltd. v M/s. Secan Invescast (India) Pvt.Ltd[13], as there is no explicit statue to fulfil the need of the system. The existing laws and the rules were not amended in recent time keeping in view the employer employee relationship.

The huge presence of foreign companies in India has influenced the Indian market at large, especially the skilled employment. The foreign companies in India in understating competiveness in their respective business also other Indian companies employ the Indian skilled employment, and share their confidential information and data and in many cases they shares skills to orate the business as well invest huge amount of money in them. There are many countries in the world where, negative covenant in the employment contract are enforceable as and following the global scenario in most of the countries, they shares the trade secrets, business data and other important information which are confidential in nature also employer invest money in

[8] Rajasi Clerk, "Law of Restrictive/Negative Covenants in Contract of Employment and Their Specific Performance: Case for Legislative Reform," 38 *Journal of the Indian Law Institute* 83–9 (1996).
[9] SCR 2 1967 378
[10] AIR 2006 SC 3426
[11] AIR 2015 Cal 261
[12] Desiccant Rotors International Pvt Ltd v Bappaditya Sarkar & Anr., Delhi HC, CS (OS) No. 337/2008
[13] CTC 2013 I 886

the employee but because of section 27 of Indian Contract Act and unclear jurisprudence and law, most of the cases by way of legal remedy execution negative covenant fail in India.

With the world becoming more interconnected and markets expanding globally, employers are confronted with the formidable task of safeguarding their interests on an international scale. Among these interests, the protection of confidential information and trade secrets stands as paramount for employers. To prevent their disclosure by employees, employers often rely on employment agreements containing restrictive covenants, such as non-compete, non-poaching, and non-solicitation clauses, among others. While these restrictions serve to safeguard an employer's interests, they also limit an employee's freedom to pursue alternative employment with a competitor of their former employer or to solicit work from their former employer's clients. Multi-National companies are well-acquainted with the challenges of enforcing non-compete clauses nationwide. Nation laws vary significantly from one Nation to another. As a company evolves from a national entity to an international one, these challenges grow exponentially in India because of failure to execute negative covenant in Employment contract. [14]

The legal contractual framework for negative covenants in employment laws in India, need to be amended and re-enacted with harmonisation with global rules and regulations in employment contracts. The Indian economy will surpass the US economy with the expected GDP to be 46.3 trillion USD; 100 million new jobs would be created in the manufacturing and service sectors by 2030[15]. The growing need of the Indian economy, the issues and challenges of the current employment and employment which will be generated in upcoming years, will also demand for strong employment contract framework to resolve the issues for smooth functioning of the employment relationship between the employer and employee related to negative covenants. The time

[14] "International Enforcement of Restrictive Covenants | Casetext,"*available at*: https://casetext.com/analysis/international-enforcement-of-restrictive-covenants (last visited July 19, 2023).

[15] Kuwar Singh, "India will overtake the US economy by 2030" *Quartz*, 2019*available at*: https://qz.com/india/1518708/indias-gdp-to-overtake-uss-by-2030-says-standard-chartered (last visited July 18, 2023).

has arrived where there is a need of amendment or specified statue or set of rules need to govern negative covenants in employment contracts as the Indian Contract Act and the employment laws of India have failed to give the desired results.

2. Literature Review

1. **Rajasi Clerk, "Law of Restrictive/Negative Covenants in Contract of Employment and Their Specific Performance: Case for Legislative Reform," 38 Journal of the Indian Law Institute 83–9 (1996).**

   Brief Summary of the Literature

   The Journal article liberalization policy of the Indian government has led to increased competition from foreign industrial and business houses in the Indian market. This has resulted in job opportunities for executive and management-level employees who possess valuable experience in dealing with markets. In this context, the issue of restrictive covenants in employment contracts becomes significant. The contract of employment forms the foundation of the employer-employee relationship, and its terms and conditions have a significant impact on labour laws and service jurisprudence. While certain aspects of employment contracts are governed by legislation, many areas remain unaffected. The Journal article focuses on whether negative covenants can be implied in employment contracts, with a specific focus on the law in the United Kingdom and India.

   Restrictive covenants in employment contracts restrict one party from engaging in otherwise lawful activities, such as pursuing alternative employment or business opportunities. Such covenants are included in two situations: when a business is sold with or without goodwill, and when an employer wishes to impose restrictions on employees. Negative covenants in employment contracts can be total or partial,

based on their extent and duration during the contract and even after its termination. In India, Section 27 of the Contract Act, 1872, declares any agreement restraining someone from carrying on a lawful trade or business to be void. Negative covenants that operate during the course of employment or during the subsistence of the contract are generally not considered restraints of trade. However, negative covenants that operate after the termination of the contract are deemed illegal and void under Section 27. The courts have upheld this interpretation, emphasizing the distinction between restraints applicable during the term of the employment contract and those that apply afterward. Under the Indian Specific Relief Act, 1963, contracts of employment cannot be specifically enforced due to their personal nature. However, if a contract contains both positive and negative covenants, and the positive covenant is incapable of specific performance, the court can enforce the negative covenant through injunctions. Such injunctions prohibit a party from engaging in activities prohibited by the negative terms of the contract.

In the United Kingdom, the law of restrictive covenants in employment contracts is part of common law and has developed through judicial pronouncements. The validity of such covenants is determined based on factors such as the employer's proprietary interest, reasonableness of restraint, and public interest. Unlike in India, UK law does not distinguish between covenants based on their operation during or after the contract.

The law of restrictive/negative covenants in employment contracts differs between India and the United Kingdom. In India, negative covenants operating after the cessation of the employment contract are deemed void, while in the UK, their validity is determined based on factors like proprietary interest and reasonableness. Legislative reform in India may be necessary to address the rigidity and inflexibility of the current legal framework, taking into account changing times and the need for greater flexibility in employment contracts.

Research Gap

i) The article is from year 1996, the laws govern negative covenants in India is still same, whereas the problem related execution of negative covenants has increased due to failure to amendment in section 27.
ii) The article does not cover challenges faced by employer in execution of employment contract.
iii) The case laws mentioned in the article is till 1996 ,whereas there is a research gap for analysis of judgments related to negative covenants and section 27 delivered till date by various High court and Supreme court.

Intended Research

i) The researcher will conduct research on issues faced by the employer in execution of negative covenants.
ii) The researcher will carry research on recent case laws related to negative covenants.
iii) The researcher would address the similar research for the United States' scenario.

2. Girish Deepak, "Restrictive Covenants: The Lack of an Effective Remedy in India", Christ University Law Journal,Vol. 6, No. 2, 33-43(2017)

Brief Summary of the Literature

The article explores the issue of granting damages in cases of restrictive covenants within commercial contracts in India. The author highlights the disparity in remedies available for positive and negative covenants under the Indian legal framework. While breach of positive covenants can be remedied through the grant of damages, negative covenants are limited to nominal damages due to the difficulty in quantifying the damages caused. This leaves parties to such contracts without an

effective remedy. The Journal article by discussing the recent emphasis on promoting business and capitalism in India, leading to an increase in complex commercial transactions and contractual breaches. The author asserts that the law should protect the innocent party suffering from a breach and to emphasize the importance of upholding contractual obligations.

Examining the Indian legal landscape, the author highlights Section 73 of the Indian Contracts Act, 1872, which provides for the compensation of the party suffering from a breach of contract. However, this remedy is not readily available for every circumstance, particularly in the case of negative covenants. The article focuses on Section 42 of the Specific Relief Act, 1963, which only provides for the remedy of an injunction to enforce negative covenants. Damages are not explicitly mentioned under this section, unlike in the case of positive covenants. The author argues that India should adopt international best practices to address this issue and discusses the Wrotham Park case in the House of Lords, which established certain principles regarding damages for breach of negative covenants. These principles provide a unique solution to the quantification problem and could be incorporated into Indian law, especially considering the country's recent push towards foreign investment.

In conclusion, the article highlights the lack of an effective remedy in India for breach of negative covenants and advocates for the adoption of international best practices to address this issue. By examining Indian and foreign case laws, the author urges a revaluation of the current legal framework to ensure fairness and protect the interests of the parties involved in commercial contracts.

Research Gap

i) The article does not contain what issues are faced by the employee in the execution of negative covenants.
ii) The article does not cover the legal framework revolved around negative covenants.

Intended Research

i) The researcher will conduct research on issues faced by the employee in execution of negative covenants.
ii) The researcher will carry research on legal framework in India and analyse for loopholes in law.

3. Avinash Govindjee and Sairam Bhat, "Restrictive Covenants in Employment Contracts: A Comparison between the Legal Positions in India and South Africa," 20 National Law School of India Review 46–61 (2008).

Brief Summary of the Literature

The Journal article highlight legal approach to restrictive covenants in employment contracts in India. The Journal article highlights the concerns of employers in retaining efficient employees, particularly in competitive industries where key employees possess valuable knowledge and skills that could be detrimental if they join a rival company. The increased mobility of employees and the potential for them to take trade secrets and confidential information with them upon leaving has further intensified these concerns.The article notes that despite the popularity of incorporating restrictive covenants in employment contracts, there has been limited research on the appropriateness of the current legal approach in India. The use of restrictive covenants, which limit employees' future conduct, raises questions regarding the freedom of contract and the right to work. The freedom of contract encompasses the freedom to bind oneself to future restrictions, but certain substantive limitations may be necessary to protect this freedom.

Traditional restrictive covenants in employment agreements include confidentiality agreements, non-competition agreements, and non-solicitation agreements. However, Indian courts have historically expressed scepticism and hostility towards such clauses, viewing them as restraints of trade and detrimental to employees' ability to earn a

living. Courts have considered restrictive covenants as anti-competitive, the result of unequal power dynamics between employers and employees, and contrary to the promotion of free labour.

The Journal article discusses key court cases that have influenced the legal position in India. It mentions the importance of striking a balance between protecting trade secrets and business connections while not unreasonably restricting employees' rights. The courts have recognized that restraints operating during the period of employment may be more justifiable, but post-employment restraints have faced greater scrutiny. The Journal article also highlights the evolving judicial attitudes towards non-compete and non-disclosure agreements and the recognition of implied terms in employment contracts. The article then compare the Indian legal scenario with south Africa for the negative covenants.

Overall, the The Journal article indicates that the Indian legal approach to restrictive covenants in employment contracts has shifted from a strict stance to a more nuanced perspective. The courts have started to consider reasonableness and the specific circumstances of each case. However, ambiguity remains in the Indian legal framework, and further research and debate are needed to establish a clearer and more consistent approach to restrictive covenants in employment contracts.

Research Gap

i) The journal article only compare the Indian legal scenario of negative covenants with South Africa, it does not contain comparison with other countries like United State of America, United Kingdom, Australia.

Intended Research

i) The researcher will have similar comparative study with United State of America, United Kingdom, and Australia.

4. **Venancio D Costa, Astha Ojha, Enforcement of Negative Covenants in a Contract," *Burnished Law Journal, 2020 available at*: https://articles.manupatra.com/article-details/Enforcement-Of-Negative-Covenants-In-A-Contract (last visited May 18, 2023)**

Brief Summary of the Literature

The Journal article explore that Enforcement of negative covenants in a contract refers to the legal validity and enforceability of agreements that restrict trade, business, or profession. In India, Section 27 of the Indian Contract Act, 1872 governs such agreements, stating that any agreement in restraint of trade is void, except in the case of selling the goodwill of a business. The doctrine of restraint of trade was initially discussed in the Indian courts in the case of Madhub Chander v. Rajcoomar Doss. The court clarified that Section 27 applies not only to absolute restrictions but also to agreements with partial or general restraints.In terms of non-compete clauses, Indian courts generally do not consider them in restraint of trade when they operate during the employment contract. The courts take a stricter view of employer-employee contracts compared to other contracts, considering the unequal bargaining power between the parties.Regarding non-solicitation clauses, the Delhi High Court held that they are reasonable restrictions and not void under Section 27. The court differentiated between the parties' relationship and concluded that non-solicitation clauses are more liberally viewed in non-employer-employee contracts. Confidentiality clauses, although restrictive, have been enforced by Indian courts. Information considered as trade secrets or proprietary, not available to the general public, can be protected under such clauses.

In conclusion, while certain restrictive covenants like non-compete, non-solicitation, and confidentiality clauses are incorporated in employment agreements to protect employers' interests, their enforceability depends on their reasonableness and adherence to the

provisions of Section 27 of the Indian Contract Act, 1872. If an agreement is deemed void, it cannot be enforced under the law.

Research Gap

i) The journal article does not contain how a negative covenants are formed, executed and enforced.
ii) The journal Article does not contain a detail study on why and how negative covenants helps employer to ensure that knowledge that comes into the hands of the employee and it is not misused to the detriment the company.

Intended Research

i) The researcher will conduct research on how Negative Covenants in Employment Contract formed, executed and enforced.
ii) The researcher will conduct further research on how negative covenants helps employer to ensure misuse of confidential information of the company.

5. Shantanu Shravan Naravane, "The Place of Reasonableness in the Restraint of Trade - Just How Much Does India Depart from the Common Law?" (Rochester, NY, 2009)

Brief Summary of the Literature

Indian contract law has always been recognized as a system that does not take into account the factor of reasonableness when assessing the legality of contracts that involve the restriction of trade. Two major commentaries on Indian contract law largely rely on the assumption that contracts in restraint of trade are considered unlawful per se. Nevertheless, a survey of the most recent decisions by the Indian Supreme Court in which it has re-examined the principles laid down in the four leading cases throws up the question whether the law as regards Section 27 of the Indian Contract Act, 1872 is an open one and that it may be different from what has been understood so far.

Niranjan Shankar Golikari (1967) was the first case that primarily focussed on whether Section 27 is applicable to restraints by the subsistence of a contract. The court decided that stoppage during the

contract period is typically not considered limitations of trade. Nevertheless, the verdict did not comment on the legality of the post-contract Re. 1 or the reasonableness consideration.

The judicial authority in Krishan Murgai (1980) resolved that the non-compete clause in the agreement was only binding on voluntary exit; hence the status of Section 27 was left open. Justice Sen expressed a point of view that Section 27 prohibits all post-contractual constraints and does not allow for a reasonableness inquiry. Nevertheless, this view was obiter and, therefore, not a final one. Gujarat Bottling (1995) dealt with the legitimacy of vertical franchise agreements. The court hypothetically held that reasonableness as such was beyond the ambit of Section 27 but did not delineate a clear-cut answer. The value of the assumption as binding depends on the court's reason for the assumption, and the court's assumption seemed to be based on the issue's mootness. Zaheer Khan (2006) was about an interlocutory injunction and the putative case of reasonableness in Section 27. The court, however, did not discuss the reasonableness issue directly but pointed out that changing the current position of law during interlocutory proceedings would not be proper. It did not go as far as to confirm Justice Sen's point in Krishan Murgai.

After that, the article performs the analysis of Section 27, which only refers to restraints and excludes any consideration of the reasonableness of the restraints, therefore, a 'reasonableness' inquiry is precluded. But from a detailed examination of the common law, it appears that the 'reasonableness' concept is an integral part of the 'restraint of trade' doctrine. Accordingly, it is not wrong to classify 'reasonableness' within the ambit of 'restraint' in Section 27. The journey of the doctrine from the common law to the present day acknowledging the changes in justice's attitude towards restraint of trade has been hugely different over the centuries. At the start, the law treated contracts in restraint of trade as void. The court, in Mitchel v.

Reynolds, however, struck a change by introducing the concept that there are both general and partial restraints, and granting the latter legal effect, but only in a case with some conditions met. Hence, the court began to shift the direction of the treatment of restraints. After that, in Nordenfelt v. Maxim, the court abandoned the total/partial division and instead instituted a reasonableness test for the validation of the restraint, i.e., the judgment would depend on the restraint's reasonableness rather than by its classification. The significance of this revolution was the flexibility of the new approach and the gradual extension of the range of interests that could be protected in the doctrine beyond the traditionally proprietary ones.

Before 1893, reasonableness was not explicitly mentioned as a factor in the treatment of restraints of trade in common law. However, the principle of reasonableness was confirmed by subsequent decisions, notably in the case of Mason v. Provident Clothing and Supply Co. Misunderstandings about the common law might have come from an incorrect interpretation of the context in which Section 27 was written. Although the Indian law was supposed to be different from the common law, the change did not relate to the concept of reasonableness. When the Indian Contract Act was being prepared and the Madhub Chunder decision was made, the status of the common law was such that the main difference was between general and partial restraints rather than an inquiry into reasonableness. Any distinctions between these two types of restraints were to be avoided by Section 27, which would deal with all restraints equally. The idea was not to reject the role of reasonableness but to get rid of the general/partial division. Some of the courts that decided differently from the main line of cases considered that section 27 changed the common law in a broader sense. Academic commentators and judges' remarks that endorse more pliant treatment of the matter also argue that the employment of reasonableness as one of the features in assessing the restraints is convincing. These examples of commercial

life and the similarities between various kinds of contracts have been used by the courts to determine the legality of restraints and to weigh the pros and cons of a particular case. Hence, it is appropriate to interpret reasonableness as an integral part of the concept of restraint in order to reflect the true essence of the provision.

To sum up, even though the notion of reasonableness is presently not recognized under Section 27 of the Indian Contract Act, there is no outright bar from such an investigation. The Supreme Court's examination of the question has been ambiguous, and the common law doctrine's trend of development indicates that reasonableness and restraint are closely linked. Hence, the argument of integrating reasonableness into the assessment of restraint under Section 27 not being an illegal one and, actually, being in line with the characteristics of the inquiry would be logically correct. More judicial guidance is needed to clarify the place of reasonableness in the Indian contract law paradigm of restraints of trade.

Research Gap

i) Indirectly, the journal paper in part "analyses section 27 of The Indian Contract Act by the way of interpretation of judicial pronouncements" but "empirical research" does not back it up.

ii) The article in the journal just deals with the explanation of the section 27 of The Indian Contract Act by referring only to the common law and not comparing it with the Civil law.

Intended Research

i) A researcher will conduct deeper investigative research with the help of empirical research that reckons the doctrine of reasonableness of negative covenants, is amendment of section 27 of The Indian Contract Act an area to be able to enforce the negative covenants.

ii) A researcher, as a part of the first step, will examine the content of Section 27 of The Indian Contract Act and compare it with the legislation of various civil law countries. Besides this, the researcher will also analyze the degree to which the negative covants can be enforced. Because

6. **S.K. Verma, "Legal Protection of Trade Secrets and Confidential Information," 44 Journal of the Indian Law Institute 336–53 (2002)**

Brief Summary of the Literature

Companies in a competitive environment are very interested in keeping their trade secrets and in ensuring the protection of confidential information in a legal way. Trade secrets are one of enterprises' most valuable assets, which not only provide them a commercial advantage but also become a decisive factor in their business success. Even though inventions, marks, authors' rights, and industrial designs help in safeguarding intellectual property, trade secrets are still the ones that provide the closest link to the company's uniqueness and a competitive edge.

However, TRIPS (The Agreement on Trade-Related Aspects of Intellectual Property Rights) is the one to set the general rule for the protection of undisclosed information, as well as for data submitted to governments or governmental agencies. This step towards recognizing trade secrets as a part of intellectual property rights was a milestone. The Paris Convention for the Protection of Industrial Property, besides addressing unfair competition in general terms, also provides for the protection of trade secrets.

Nowadays, the legal protection of business trade secrets and confidential information is essential for companies operating in a competitive market. Trade secrets represent valuable resources that

provide a company with a significant advantage and are even the major success factor of enterprises. Granted, patents, trademarks, and copyrights do also have a role in the protection of intellectual property, but it is the trade secrets that are closest to the company's uniqueness and give it a competitive edge.

It is hard to define the characteristics of a trade secret and confidential information. Trade secrets differ from confidential information by the fact that the disclosure of them to competitors would bring the company the most harm. From an information standpoint, it must be business-oriented and limited in terms of divulgation. While the information's uniqueness is not quite mandatory, it should still not be easily accessible and, at the same time, be a source of benefit over rivals. Trade secrets are in the form of both technical and business-related secrets, which range from the processes of production to the company's sales/market projections. It is important that trade secrets be kept safe because these are the small innovations that can be part of a company and that are not even done for patent standards or are even facing problems in patent protection. Consequently, they also provide longer-term protection than that obtainable from patents and can be another way of protecting intellectual assets.

Actually, the legal protection of the latter and the former is inevitably the thing that most companies would be interested in as it would be the key of a company's success and would allow the company to flourish in the future. Innovation is encouraged, intellectual property rights are safeguarded, and economic growth is advanced. The situation where the greatest problem is how to strike the perfect balance between protection and competition remains the same, and it still requires a lot of effort and good legal frameworks to tackle it effectively.

Research Gap

i) The journal article is not focusing on India and its legal system in the area of negative covenants and restrain of section 27 for the enforcement of negative covenants for the protection of IPR Rights,

ii) The journal article is not focusing on any Indian Case law in relation to the enforcement of the negative covants for the protection of IPR rights in India.

Intended Research

i) The researcher will perform research on the implementation of a work disagreement clause, stating not to do a particular matter for the sake of the IPR rights.

ii) The researcher will do a comparative analysis with the United States of America, the United Kingdom, and Australia for the enforcement of a work disagreement clause stating not to do a particular matter for the sake of the IPR rights.

iii) The researcher will perform research on the judgment with regard to the setting of the work restriction for the purpose of the intellectual property right protection in India.

7. **Grant R. Garber, "Noncompete Clauses: Employee Mobility, Innovation Ecosystems, and Multinational R&D Offshoring," 28 *Berkeley Technology Law Journal* 1079–109 (2013).**

Brief Summary of the Literature

No compete clauses have grown in importance and scope over the years and with no compete clause companies have started to increasingly wrap themselves in these business laws so as not only to protect their trade secret information but strengthen their business by keeping competitors out of their market. In brief, the article investigates the consequences of strict enforcement of no compete in the light of

employee mobility, innovation ecosystems and offshoring of multinational R&D, while mapping out a three-country (China, India, and Brazil) comparative focus. The review points out that the offshoring of innovation activities is a leading trend among multinationals, who are moving their R&D efforts from developed to emerging economies like China, India, and Brazil. These markets are ideal due to the combination of low costs and availability of qualified labor that, in turn, can stimulate a company's stylish idea-to-cash cycle. Unfortunately, leakage in the trade secret arena of the technology industry becomes inevitable, especially with an increasing employee mobility trend who not only shift to competitors but launch their startups having resigned their previous employer.

Solutions to this problem at the level of enterprises usually constitute the imposition of the no compete conditions onto the employees which also include signing a no compete agreement which in its essence restrains the employee from working for a rival company or starting his/her own business after resignation. No compete clause enforcement, which is the issue that evokes different reactions internationally and within each country, leads to discussions about the degree of protection of trade secrets and employee freedom. Critics argue that the rigorous implementation of no-compete agreements severely restricts employee mobility and, thus, has a negative effect on innovation ecosystems, which are intricate systems of public and private organizations that facilitate the creation and exchange of new technologies. China, India, and Brazil are developing countries that aim to nurture innovation ecosystems while enticing multinational companies and taking advantage of technology spillovers. The research indicates that an overly strict application of no-compete agreements may not be suitable for these three countries. The enforcement system must be based on each country's special circumstances and objectives,

so as to uphold intellectual property rights and at the same time invigorate innovation.

Moreover, it covers the background, implementation, and importance of no compete clause in the literature. Different jurisdictions are characterized by the diverse methods of handling no compete matters, as some are strict in no compete enforcement and others regard them as practically unenforceable. No-compete clauses are one of the critical instruments that the high-technology sector, among the others, uses; however, recent researches argue that their enforcement could result in a restrain of employee mobility, the creation of new companies and knowledge dissemination. On the whole, this genre of the literature acknowledges the debate about the issue of no-compete enforcement and its influence on innovation ecosystems given the case of China, India, and Brazil. It highlights the requirement of a delicate approach for the enforcement of no competes that would be consistent with the definition of goals and the uniqueness of each nation's innovation.

Research Gap

i) The emphasis of the journal article was on the role of non-compete clause (negative covenants) in that aspect which, through the help of the company and the country, gained higher economic growth. The article briefly outlines the situation in India; however, it remains silent about the recent developments in India with regard to the enforcement of non-compete clause (negative covenants) and its influence on the economy.

ii) The journal article mainly focus on the ways in which the use of negative covenants in Indian companies can lead to higher economic growth.

Intended Research

i) The researcher on the first point will research and analyze the growth of the Indian economy to be the main criterion for the enforcement of non-compete clause (negative covenants) in India and the possible ways to modify the law to enable the enforcement of non-compete clause (negative covenants) for the growth of Indian company.

ii) The researcher will investigate the field of non-compete (negative covenants) identifying the factors that create a positive impact on the innovation ecosystem and economy at large.

8. **Angie Davis, Eric D. Reicin and Marisa Warren, "Developing Trends in Non-Compete Agreements and Other Restrictive Covenants," 30 ABA Journal of Labor & Employment Law 255–72 (2015)**

Brief Summary of the Literature

Non-compete agreements and other restrictive covenants are among the tools that companies use to safeguard their interests. Nevertheless, these agreements are also employees' future hindrance, as they limit them in using the information and contacts gained during the previous job. As employment-law lawyers, we should understand the constant changes in laws regarding restrictive negative covenants. This literature review examines the maturing trends with the means of proper negotiation and defense in the matters of restrictive covenants.

Best Practices for Negotiating Restrictive Covenants: Generally, courts will enforce restrictive covenants if these covenants meet four criteria: the covenants protect a legitimate business interest, involve adequate consideration as a quid pro quo, are narrowly tailored, and have reasonable time and territorial limitations. The problem is that each state treats restrictive covenants differently, so it is necessary to do state-specific research prior to drafting or enforcing such agreements. Some jurisdictions, while talking about geographic restrictions, may support customer restrictions as a substitute. The adequacy of

consideration differs considerably in the different states, and while in some states continued employment alone is enough, in others it is not.

Other Provisions Often Included in Restrictive Covenants: The determination of which jurisdiction's laws govern and what restrictive covenants can do is very important. Although courts mostly accept the parties' choice of law, there are some jurisdictions that may deny the selection of law provision that conflicts with their public policy. Unlike non-compete agreements, confidentiality agreements are designed only to safeguard proprietary or trade secret information. Several restrictions on the use of non-disclosure agreements are established by state laws. Whether or not a trade secret will be the subject of a court proceeding is often based on state laws or the Uniform Trade Secrets Act.

Most of the time, restrictive covenants are added to the set of employment agreements without much bargaining. The courts judge the agreement by its reasonability in the area and time limits and whether the employer's legitimate interests are safeguarded. The defending party may raise points that the contract is too extensive and that the employer has no protectable interest. It should be noted that the decision by an employer to refrain from pressing the matter in one case does not automatically mean that the employer will not seek the covenant to be enforced at another time, whereas a minority opinion holds that waivers can occur. The changing legal framework around non-compete agreements and other restrictive muniments challenge employment lawyers to keep track of new trends. To negotiate and draft agreements that can be enforced is to involve the consideration of state-specific laws and the use of their best practices. It is also very important for the employee to know his/her defences in case restrictive coveniants will be enforced against him. With the continued changes in laws, the responsibility of practitioners to be constantly updated in order to navigate effectively the complex landscape of restrictive covenants is cardinal.

Research Gap

i) The Article Focus on the developing trends in the United State of America, whereas it contain the non-negation of employment terms can be a defense available in negative covenants but does not cover limitation of defense.

Intended Research

i) The researcher will conduct more research as part of comparative study defense available in enforcement of negative covenants.
ii) The researcher will research on defenses available in enforcement of negative covenants in India with employee.

9. "Contracts-Enforcement of Negative Covenants by Injunction," INDIANA LAW JOURNAL

Brief Summary of the Literature

The Journal article provided deals with the enforcement of negative covenants by injunction in the context of contracts. It mainly focuses on a court case, which presents an employer as the plaintiff who asks the court to restrain a former worker by means of an injunction, the defendant, because he had broken a non-compete agreement. The court's decision to reverse the judgment sustaining the demurrer indicates that the restraint was considered reasonable and not against public policy.

The article next discusses the nature of negative covenants, and as an initial step, it separates them into two groups: those dealing with contracts of employment and those that are ancillary to the sale of a business or profession. Thus, in the case of employment contracts, the company is the one to make a claim that it will suffer irreparable injury and that legal remedies will be inadequate, and, moreover, that the employee's services are of such a special or unique nature as to be ground for an injunction. Meanwhile, such non-compete as the case is termination of employment the courts balance the employer's need for

protection against the employee's right to work and the public interest. Besides that, the text also provides the differences between the cases of non-compete after release and those types of covenants which are ancillary to business sales. The article explains that the actions in both cases which are prohibited by covenants are similar. However, the courts are less willing to a negative covenants in those situations of employee contracts. This difference is substantiated by the fact that the buyer needs to get hold of the sold business, while the employer tries to keep what he already has. Nevertheless, the proponents have advanced arguments in favor of the abolition of the dichotomy.

Moreover, the article deals with the factors that courts take into account when deciding to issue an injunction, such as the geographical scope, the length of the agreement, and whether there are legal solutions to the dispute. It states that these elements in question are probable and the judges have the freedom to apply them in any way they think fit. In the end of the article, there is a very brief mention of a different case concerning the priority of public fund deposits in an insolvent bank. It suggests that the court refused the state's claim for priority over other creditors referring to a precedent set in Indiana but supported a different point of view not connected with the stated question. Overall, The Journal article is the implementation of injunction as a tool to stop the enforcement of negative covenants in the areas of contracts, giving a glimpse of key aspects and laws hinted.

Research Gap

i) The article just mentions the enforcement of negative covenants by injunction with the context of USA's Law.

ii) The article is more than 50 years old, and it lacks recent development.

Intended Research

i) The researcher will compare the enforcement of negative covenant in the United States of America, India legal enforcement, and the grant of injunction for the enforcement of the negative covenant.

ii) The researcher will also do more research and explore the enforcement of negative covenants by the injunction in Unites State of America's law in recent time.

10. Hazel McLean, "Contract of Employment. Negative Covenants and No Work, No Pay," 49 The Cambridge Law Journal 28–31 (1990).

Brief Summary of the Literature

It can be said that in the context of employment law, recent decisions of the Court of Appeal have had different consequences for the employees. One of the cases is Warren v. Mendy [1989] 1 W.L.R 853, which concerned boxer Nigel Benn and his contract with the plaintiff about the management. Nevertheless, Benn later on requested the defendant to be his agent which caused a legal argument. The plaintiff was asking for an injunction to stop the defendant from supporting the breach of contract by the defendant. Eventually, the Court of Appeal turned down the injunction, indicating that it would be similar to giving specific performance of the contract, something that is normally forbidden in cases of contract of service. This ruling was supportive of employees with extraordinary talents as it acknowledged that the enforcement of negative covenants might block their way to the full exploitation of their talents.

On the other hand, Wiluszynski v. London Borough of Tower Hamlets [1989] I.R.L.R. 259 point of view to ordinary employees who were involved in limited industrial action. The litigations were about an estates officer who was a part of a campaign of limited industrial action and his method was the refusal to answer certain inquiries from Council members. The Court of Appeal found the officer's refusal to perform part of his contractual services to be the reason that the

employer could either withhold the wages or not take the work performed as a benefit. The decision limited the practical use of industrial action that was constrained in such a way that workers were allowed to choose between continuing the usual work or not getting paid. In addition to that, the Wiluszynski case set the legal grounds for an employer to stop the payment for services if they clearly communicated that they did not accept the services. This clause caused problems with employers, as they had to be careful about their false or genuine statements of non-acceptance. Nevertheless, if an employer gave instructions to an employee during the time the latter was engaged in limited duties, the previously mentioned disposition that the work was voluntary might be overruled.

In general, the recent Court of Appeal rulings emphasize the changing character of the employment contract. While the Warren v. Mendy case managed to give some support to employees with unique skills, Wiluszynski limited the efficacy of a staged industrial action. Besides the statutory restrictions, employers can now use the common law principle of "no work, no pay" as an extra instrument. These changes have a considerable impact on the décisions of both employers and employees and are a sign of major shift in employment law.

Research Gap

i) The article is solely based on the judicial pronouncements in the United Kingdom. There is no mention of any other country.

iii) The article mainly concentrates on a breach of Negative covenants committed by an employee. It does not extensively talk about the breach of Negative covenants by the employer.

Intended Research

i) The researcher will study the United Kingdom's case laws by comparing them to find how the law has been changed to be more effective in the enforcement of Negative covenants in India.

ii) The researcher will investigate how the employee is supposed to forcibly execute the Negative covenants if the employer is the one who has broken them.

11. Wendi S. Lazar, "Employment Agreements and Cross Border Employment—Confidentiality, Trade Secret, and Other Restrictive Covenants In a Global Economy," 24 The Labor Lawyer 195–211 (2008).

Brief Summary of the Literature

Employment contracts and cross-border employment are major sources of confusion for the global market, especially when it involves the negotiation and drafting of confidentiality and post-employment restrictive covenant clauses. These covenants are critical to the protection of employers' interests and trade secrets, however, the ability to enforce them differs from one country to another. In the U.S., the common law system provides for obligations of confidentiality and trade secret protection, whereas many foreign countries require that such obligations be supported by explicit contractual agreements in order to be enforceable.

In the U.S., confidentiality clauses necessarily require the employer to prove that the information is indeed confidential and that it is not readily available to the general public. On the other hand, trade secret clauses require ascertainment that the information gives an economic advantage and it is at all times kept secret by the employer. Trade secret misappropriation is punishable under both civil and criminal laws in the U.S. Non-competition clauses, which prevent an employee from joining a competitor, in the U.S. are, however, considered valid if the rationale behind them is the protection of the employer's legitimate interests, they do not cause excessive hardship on employees and are not detrimental to the public interest .Geographic limitations stated in non-compete agreements are closely examined by the court, which assesses the degree of logical connection between the employer's

interests and the specified territory. The courts have to do a deep research and have a good understanding of the differences between US and foreign laws if they want to be able to enforce post-employment restrictions worldwide which is a very demanding task. Organizations need to steer through the varying definitions of confidentiality, trade secrets, and also through the non-competition clause in different territories so that they can be sure of the order they can make. As the world economy becomes more interconnected, the issue of multinational and mobile staff is now a major problem that requires a lot of careful thinking of these stipulations amid the trend of global networking. The document talks about how the law and the court system deal with the problem of the limitation of employees' rights after they leave the company and the different treatment in various jurisdictions. It points to the growing need for the protection of confidential information and trade secrets in the global business arena.

This article covers the enforcement mechanisms in the United States, being there the situation when preliminary injunctive relief is usually filed by employers to stop ex-workers from exposing confidential information or joining competing companies. It also talks about the application of "garden leave" clauses in the UK, which have been found to be more enforceable than traditional non-compete provisions. The article deals with the variations in the employee's duty of loyalty in different Asia countries such as China and Japan and therefore, the differences in the legal landscape. First of all, it mentions the influence of privacy laws on the pushing of confidentiality provisions and the varied methods of different EU countries, such as France, Germany, and the UK. The article really helps you understand conflict of law and jurisdictional issues in the European Union (EU), pointing to the EU courts' rejection of post-employment restrictive covenants. The article proceeds by looking at the factors that affect the enforceability of non-compete agreements, which are compensation, temporal and geographical limitations. Moreover, this article goes over the whole legal

situation from the point of view of the employee's obligation to be loyal in different Asian countries such as China and Japan. It talks about the conditions under which non-compete agreements become legally binding with factors such as the compensation, temporal and geographical limitations being the primary ones. Besides that, the article discusses conflict of law and jurisdictional issues in the European Union (EU), shedding light on the EU courts' rejection of post-employment restrictive covenants. It conveys the differences in approaches of various EU member states with respect to privacy laws and their impact on the enforcement of confidentiality provisions. Finally, the article points out that restrictive covenants need to be drafted carefully in compliance with local laws and privacy rights as well as being tailored for different jurisdictions so as to be binding, and added that the case law area is moving and that multinational companies have to go through foreign legal systems to protect their confidential information.

Research Gap

i) The article compares enforcement mechanisms for restrictive covenants in Asia as a continent, but it does not specifically compare the different ways in which Non-Compete and employment restraining agreements are being enforced in India to protect trade secrets of the employer.

Intended Research

i) The researcher will conduct the research on the legal recognition of Non-Compete and negative covenants in employment contract for the protection of the trade secret of the employer.

ii) The researcher will do the comparative study of laws of India and United States, United Kingdom for enforcement mechanisms of Non-Compete and Negative covenants.

12. **Shrirang Ashtaputre, Manasi Joglekar and Asyaffa Ridzqi Amandha, "Enforceability of Restrictive Covenants in Employment Contracts: Comparing India and Indonesia," 8 Law Research Review Quarterly 403–26 (2022).**

Brief Summary of the Literature

A literature review is the reference of restrictive covenants in employer contracts. Primary focus has been on non-disclosure agreements, non-poaching agreements, non-solicitation agreements, and non-compete clauses. The necessity of these clauses to shield the employer's confidentiality, trade secrets, and goodwill has been underlined in the review. It elaborates on the scope and restrictions of such contractual terms in the Indian legal scenario and brings in the exception clause to Section 27 of the Indian Contract Act, 1872 along with the particular judgments. While most restrictions on disclosure, poaching, and solicitation are upheld, those of competing with the employer after termination are frequently treated as unlawful restraints and void. The review also talks about the importance of reaching an agreement that would both uphold the employers' rights and allow employees to look for jobs.The literature review discusses the optimization of treaty arrangements in labor contracts from the perspective of the welfare state in Indonesia. It underlines the importance of the workers' legal protection and their rights as per Law Number 13 of 2003 concerning Manpower. It points out the necessity to constantly optimize and socialize labor agreements to achieve the goal of equal treatment, the provision of job training, work placement, fair wages, working time regulations, occupational safety and health, social security, and other rights for contract workers The review also delves into the idea of the welfare state wherein the government shoulders the responsibility of promoting economic efficiency, alleviating poverty, socializing, and

securing social stability. The summary highlights the state's function in labor contracts' intervention and regulation to maintain a power dynamic that is balanced and at the same time, protect workers' rights as per Pancasila principles that are based on the implementation of equal rights and social justice for all Indonesians.

Summing up, it is stated that the clauses which limit an employee from working for a similar firm after the termination of the contract are treated as illegal and go against the principles of freedom of trade and profession. It is for the employer to provide evidence of how these restrictions will safeguard the two parties' interests in a reasonable way. At the same time, confidentiality, non-poaching, and non-solicitation agreements may be among the reasons that the employer is interested in and that is why they are justified, but non-compete clauses and garden leaves, which unduly restrict employees, are recognized as unconstitutional. The stance in India on this matter is that they have acknowledged the reality in which the implementation of negative covenants that oppress employees and limit their freedom to voluntarily move to another employer are unfair and, therefore, are prohibited by Section 27 of the Indian Contract Act, and the case lawIn the Indonesian context, the research emphasizes the significance of systematically labor protection, implementing labor agreements in line with Law Number 13 of 2003 concerning Manpower to get the things moving to workers' welfare. The authorities have the momentous role of asserting the principles of the welfare state, as well as, jeopardy the rights of the workers. The workers-to-be should be informed and made aware of the vital aspects of labor agreements, so that they may be familiar with their rights and duties. Measures against law-breaking employers should be taken by the government. At the same time, it is an occasion when the government should mount a campaign to educate workers about their employment agreements.

Research Gap

i) The paper does not show the breadth of research that it bases on the existing case law.

ii) The paper does not have empirical research.

iii) The paper has nothing to do with the employer's perspective on enforcement of Restrictive Covenants in Employment Contracts.

Intended Research

i) The researcher is going to perform research to examine the probable changes in part 27 for enacting the Restrictive Covenants in Employment Contracts Enforceability.

iii) The researcher will carry out an empirical study among employers for the issues faced and to be able to tamper with the Enforceability of Restrictive Covenants in Employment Contracts to be able to safeguard their interest.

13. "Validity of Restrictive Covenants in Contracts – K Law, "available at: https://www.klaw.in/validity-of-restrictive-covenants-in-contractsve-2/ (last visited May 13, 2023).

Brief Summary of the Literature

Technological advancement and globalization have made the relationship between employees and employers more complicated, thus the use of contracts to govern these relationships. In order to protect their business interests such as proprietary information and trade secrets, employers inject restrictive covenants into employment contracts. These covenants limit employees from the use of confidential information or involvement in certain professions, trades, or businesses without advance consent from the employer. This literature review is mainly about the legal validity of restrictive covants in India and the enforceability of various restrictions. Restrictive covenants can represent any of the following: non-compete clauses, non-solicit clauses, or confidentiality clauses. Indian laws, specifically Article 19 (1) (g) of the Constitution and Section 27 of the Indian Contract Act, are

the main points that address the issue of the freedom to perform professions or do business. Although these provisions accept the right to impose restrictions that are reasonable, they also declare that any agreements restraining lawful professions, trades, or businesses are void to that extent. Indian courts have been very cautious in the past while deciding on the enforceability of restrictive covenants. Generally, during employment, courts do not consider restrictive covenants as a restraint of trade under Section 27 of the Contract Act. Though the question of legality and enforcement of post-employment non-compete obligations was in discussion, the Supreme Court settled it by stating that negative covenants can be accepted if the limitations are reasonable and not opposing public policy. Post-employment restrictive covenants, which are forcibly extended outside the course of employment, are deemed to be void and unenforceable.

Moreover, there was an examination of the enforceability of non-solicit clauses on a case-by-case basis that are restricting employees from soliciting clients or employees after termination. The Delhi High Court has permitted non-solicitation clauses between businesses, whereas the Calcutta High Court has decided that the former employees soliciting clients or inducing others to contract with their former employer should not be allowed. Confidentiality clauses, in general, have been supported and implemented in post-employment situations, with courts acknowledging the public interest in secrecy. Offenses of secrecy from contracts or equitable rights may be limited by the courts. Nevertheless, the Delhi High Court has clarified that employers cannot stop the ex-employees from using the skills and knowledge that they gained during their employment.

On the whole, the question of whether or not restrictive covenants in India are valid and enforceable is quite complicated and is determined by the clause's reasonableness and the facts of each case. Although courts may have different views, these contractual provisions' mere existence does not automatically imply their invalidity. Besides, the

employers may put in place certain legitimate restrictive covenants during the employment period whereas the post-termination restrictions must be justified by the employers in order for them to be enforced.

Research Gap

i) The article does not provide enough case laws and also it is not enough to do a comparative study with other countries.

ii) The article does not separate the different types of restrictive Covenants in Contracts.

Intended Research

i) The researcher will validate and enforce the restrictive covenants in India.

ii) The researcher will do the thorough research on the type of restrictive Covenants.

14. "Validity of Restrictive Covenants in Contracts – K Law," available at: https://www.klaw.in/validity-of-restrictive-covenants-in-contractsve-2/ (last visited May 13, 2023)

Brief Summary of the Literature

The Journal article pivots around the issue of the non-compete and non-solicitation clauses' practicability as well as their legal standing in India. Initially, the paper starts with the emphasis on relationships between contracting parties playing a crucial role in the business world of today. To reduce the risk of leakage, restrictive covenants become necessary to protect confidential information and trade secrets. The author reports that employment courts are particularly stringent when considering non-compete in work contracts due to the power imbalance between employers and employees. Typically, there is a certain level of acceptance regarding the legitimacy of the restrictive covenants during the term of employment, although some disputes onpost-termination obligations may still arise. Niranjan Shankar Golikari v. The Century Spinning and Manufacturing Company Ltd is a landmark case setting forth the principle that limitations on post-termination non-compete clauses, if reasonable, are legal and valid. The intent behind the non-

compete clauses in commercial agreements is to keep the most delicate parts of a company's operation out of the competitors' reach. On the other hand, courts also elucidate the differences between employer-employee relationships and other commercial contracts. The article surveys the case law to recourses like the Gujarat Bottling Co. Ltd. v. Coca Cola and Ors. incident where the non-compete clause was sustained, and the case of GEA Energy System India Ltd. v. Germanischer Lloyd Aktiengesellschaft, from which the court indicated that the imposed restrictions should not be of an absolute nature.

Non-solicitation clauses, as recounted in the article, are a common part of the non-solicitation agreement and serve to prevent former employees or business partners to solicit clients, suppliers, or employees. The courts, in their rulings, have often found ways to vary the application of non-solicitation clauses from case to case, depending on the facts. Wipro Ltd. v. Beckman Coulter International SA and Embee Software Private Limited v. Samir Kumar Shaw refer to the legal precedence distinguished while talking about the enforceability of non-solicitation clauses in commercial and employment agreements, respectively. In general, the courts' perspective on the issue as delineated in the Journal article is that non-compete and non-solicitation undertakings which provide for the protection of fair business interest and do not disclose confidential information are valid but strictly subject to the parties' specific circumstances and negotiating power.

Research Gap

i) The article concerns employee’s interest and employer’s interest in the event of enforcement of Restrictive Covenants but does not discuss employee’s interest in the event of enforcement of Restrictive Covenants.

ii)The paper only deals with restrictive Covenants from the perspective of non-compete and non-soliciting. No references are made to other restrictive Covenants such as non-disclose and employment bond.

Intended Research

i) The researcher will be investigating ways that employee's rights can be protected in the event of enforcement of Restrictive Covenants.

iii) The researcher will conduct similar studies on the execution of other restrictive Covenants such as non-disclosure and employment bond.

15. Critical Analysis Of Section 27 Of Indian Contract Act - Jus Corpus," 2022available at: https://www.juscorpus.com/critical-analysis-of-section-27-of-indian-contract-act/ (last visited May 19, 2023).

Brief Summary of the Literature

This article analyses Section 27 of the Indian Contract Act, its loopholes, and compares it to English law. The section, which is an adaptation of an archaic English idea, is for the purpose of controlling trade restraints. It determines all trade restriction agreements to be null and void pro tanto, which is a sum of the idea rights of trade and business under Article 19 (1) (g). However, some exceptions to this rule are there.

First interpretative case of Section 27 was Madhub Chander v Raj Coomar Doss, which distinguished between an absolute and a partial restraint. The judge explained that even partial reserves were part of Section 27 unless they were eligible for exceptions. Four stages decide the legality of a restraint: (1) whether the doctrine applies, (2) identifying the covenanter's lawful concern, (3) the covenant's reasonability, and (4) reasonability from the viewpoint of both parties and the public interest.The exceptions may be divided into the ones provided by the law and the ones recognized by the court. Statutory exceptions are those provisions that deal with agreements related to goodwill and partnerships. The set of judicial exceptions comprises the restraints that occur through the service, trade combinations and solus agreements. To be upheld, contracts that limit trade have to be within

those exceptions and restraints. In comparison to English law, Indian law declares all contracts that limit trade as void, whereas English law looks at the reasonability. The English courts' decisions like Nordenfelt vs Maxim Nordenfelt Guns and Ammunition Co Ltd and Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd gave the legal definition of reasonability and also pointed out its changing character. The judges of India recognized this difference in their verdict of Sk Kalu vs Ram Saran Bhagat.

To wrap up, Section 27 of the Indian Contract Act, which is based on English law, is a more limited one. The article indicates the necessity of new precedents and a more extensive inquiry of the factors involved in reasonability in the case of restraints of trade, which is beyond the named exceptions in the act. The responsibility to demonstrate the truth of the application by the party who implements the restraint, showing that it is reasonable and necessary for trade protection and at the same time does not negatively impact the public interest is held.

Research Gap

i) The research paper is secondary data-driven, and it does not provide any primary data related to the amendment of Section 27 of the Indian Contract Act.

ii) In the research article, limited court judgments have been referred to.

iii) The paper does not discuss the relationship between Section 27 and Sections 73 and 74 of the Indian Contract Act and the issue of the right to claim penalty.

Intended Research

i) The researcher will collect primary data and do data exploratory work to check if there is a need for the amendment of Section 27 of the Indian Contract Act.

ii) The researcher will explore the other instances of judicial pronouncements concerning the restrictive covenants and interpretation of Section 27.

iv) The researcher will explore the other judicial pronouncements concerning section 73 and 74 of the Indian Contract Act and the right to claim the penalty in the event of the breach of the negative covenant.

16. Achal Gupta, "Agreement in restraint of trade" SCC Blog, 2021available at: https://www.scconline.com/blog/post/2021/03/20/agreement/ (last visited May 19, 2023).

Brief Summary of the Literature

The Journal article explains the various provisions of section 27 of the Indian Contract Act, 1872, which is a chapter on agreements in restraint of trade. As per this section, every agreement is regarded as illegal that restrains a person from following a lawful profession, trade or business except in some specified cases. The article clarifies the exception to the prohibition which permits an undertaking not to operate a like business within certain local limits on account of the sale of a business. Nevertheless, the extent of such confines has to be affirmed by the judiciary. The clause on the prohibition of trade in section 27 was adapted from David D. Field's Draft Code for New York, which relies on the ancient English law of restraint of trade.

The article highlights that the High Courts in India have held that the test of reasonableness and the principle of partial restraint are not applicable unless a case falls within the exception mentioned in Section 27. The Law Commission, in its Thirteenth Report, recommended amendments to allow reasonable restrictions in the interest of the parties and the public, but no action has been taken on this recommendation. Furthermore, the article discusses the scope of

Section 27, stating that it applies to all agreements in restraint of trade, including both general and partial restraints. Agreements that limit freedom in exercising a lawful profession or business are often criticized as they conflict with public interest and restrict personal freedom.The article cites several court cases to illustrate the application of Section 27. It emphasizes that agreements containing negative obligations, whether direct or indirect, can be considered as restraints of trade. The courts have interpreted and applied the provisions of Section 27 in various cases, taking into account factors such as reasonableness, intent of the parties, and protection of trade.

Overall, the Journal article provides an overview of Section 27 of the Indian Contract Act and the judicial interpretation and application of its provisions in cases related to agreements in restraint of trade. It highlights the general rule of vividness of such agreements, except for the specific exception related to the sale of goodwill.

Research Gap

i) The article expressly does not cover exception of section 27 of the Indian contract act for the Agreement in restraint of trade in context of the employment law.
ii) The article cover less number of judicial cases in support of the contention.

Intended Research

i) The researcher will carry in depth research on exception of section 27 of the Indian contract covered Employment contract.
ii) The researcher will carry in depth research on possible amendment of section 27 of the Indian contract to add exception to covered Employment contract.

17. Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd., AIR 1967 SC 1098, [1967]2SCR378

Brief Summary of the Literature

Contract - breach - Section 27 of Indian Contract Act,1872 – appellant accepted by the respondents to post of shift supervisor - signed standard form contract of five years - appellant received training for nine months – some difficulty between respondent and appellant - appellant absented himself from work and then handed over his resignation letter which was not accepted - appellant informed respondent that he had joined anothercompany for a higher pay - Trial Court issued injunction - appellant restrained from employment pursuant to Clause 9 of contract for four years and not to divulge secrets as in Clause 17 - High Court held that Clauses 9 and 17 not blanket restrictions - restriction only on information gathered during working in particular department - could seek employment in other areas - High Court confirmed injunction - appellant moves Supreme Court - negative covenants operative during period of contract do not fall under Section 27 - Clause 17 of contract does not amount to restraint in trade -held, injunction not too wide or unreasonable or unnecessary for protection of interests of respondent company.

Research Gap

i) The judgment does not explain about other restrictive covenants other than non-compete.

ii) The judgment does not explain why negative covenants of non-compete is not operative post period of contract.

Intended Research

i) The researcher will carry on research on negative covenants of non-compete is operative post period of contract.

18. Superintendence Company Of India vs Krishan Murgai, 980 AIR 1717, 1980 SCR (3)1278

Brief Summary of the Literature

Contract Act, 1872 Section 27-Negative covenant restricting right of the employee, after he left the company, to engage in any business similar to, or competitive with that of the employer -Whether in restraint of trade and therefore, void under Section 27- Expression "after you leave the company" used in the covenant- Meaning of "leave" - Held, in the context means voluntarily leaving the service and does not include dismissal or termination of service by employer- Where the employee is dismissed and thereafter, he engages in similar business, held, the covenant is not enforceable against him - Deeds and Documents - Service contract Specific Relief Act, 1963, Section 42 Labour and Services - Resignation and termination of service - Distinction

Research Gap

i) The judgment does not explain that if employee voluntary leave organization and engages in similar business, in that case the covenant enforceable or not.

Intended Research

i) The researcher will conduct research on if employee voluntary leave organization and engages in similar business, in that case the covenant enforceable or not.

19. Gujarat Bottling Co. Ltd. and Ors. Vs Coca Cola Company and Ors. AIR1995SC2372, (1995)5SCC545

Brief Summary of the Literature

A. Civil Procedure Code, 1908 - Or. 39, Rr. 1 and 2 Interim injunction enforcing negative stipulation In contract - Whether justified - Agreement for grant of franchise by Coca Cola Co. to Gujarat Bottling Co. (GBC) to manufacture, bottle, sell and distribute beverages under Coca Cola Co.'s trade marks Negative stipulation in the agreement restraining GBC not to deal with beverages of any other brand or trade mark/trade name- Shares of GBC transferred to another company, Pepsi, a trade rival of Coca Cola Co. without obtaining consent of Coca Cola Co. in terms of the agreement and instead issuing notice for

terminating the agreement - Suit filed by Coca Cola Co. against GBC Interim Injunction Issued by High Court restraining the transferees of shares of GBC from using plants of GBC for manufacture, bottling, sale etc. of beverages of any other person- Appellant GBC contending that the injunction would result in its irreparable loss and unemployment Held, grant of injunction justified as it intended to prevent Pepsi, which came in control of GBC, to gain advantage over Coca Cola - Conduct of GBC being not fair, it would not be entitled to the equitable relief of vacating the injunction Specific Relief Act, 1963, S. 42 B. Civil Procedure Code, 1908 Or. 39- Interlocutory injunction Grant - Discretion of court Factors to be considered in exercise of discretion - Balance of convenience to be seen- Being an equitable relief, conduct of party seeking the injunction or the party seeking Court's interference with the order of injunction must be fair - Undertaking can be obtained from the party in whose favour injunction is granted to compensate the other party in case of decision in favour of that party- Equity C. Specific Relief Act, 1963 S. 42 Injunction enforcing negative stipulation in contract-Discretion of court - When can injunction be refused.

Research Gap

i) The judgment does not specifically cover enforcement negative covenant in the employment contract via Interim injunction.

Intended Research

i) The researcher will conduct research on if employee voluntary leave organisation and engages in similar business, in that case the covenant enforceable or not.

20. Percept D'Markr (India) Pvt. Ltd vs Zaheer Khan & Anr (2006) 4 SCC 227

Brief Summary of the Literature

Contract Act, 1872 S. 27-Bar on post-contractual covenants or restrictions under Scope Held, bar on such covenants or restrictions is - not confined only to contracts of employment, but is also applicable

to all other contracts Promotional/advertising/endorsement/event management agency contracts Contract entered into between appellant and R-1, a leading bowler of the Indian cricket team, for appellant to act as promotion agents/event managers, etc. for R-1 for three years - Contract containing a "first option" or "right of first refusal" clause in cl. 31(b) of contract [set out in para 65 herein] Said clause seeking to impose obligation at the time of expiry of the contract on R-1 not to accept any offer from any, third-party promotion agents/event managers without first providing the appellant the opportunity to match the third-party offer - Question arising whether said cl. 31(b) was a covenant which fell afoul of S. 27 for being in restraint of trade Supreme Court discussing possible alternative prima facie views since matter had come up before it in interlocutory proceedings, and leaving appellant to pursue its remedy in arbitration for breach of contract as provided for by cl. 32(g) of the contract All contentions expressly left open Supreme Court, however refusing to grant interim relief of restraining R-1 from contracting with third parties

Contract Act, 1872 - S. 27 Post-contractual covenants or restrictions - When permissible Held, while construing such covenant or restriction neither test of reasonableness nor principle of restraint being partial is applicable, unless the case falls within the express exception engrafted in S. 27

Research Gap

i) The judgment does not specifically cover enforcement negative covenant in the employment contract via Interim injunction.

Intended Research

i) The researcher will carry on the research on the enforcement of the negative covenants in the employment contract via Interim injunction.

21. Percept Pranab Kumar Pal vs M/S. Liz Investments Pvt. Ltd (2009) 6 scc 689

Brief Summary of the Literature

Contract and Specific Relief - Specific contracts - Employment - Right to resignation Director's resignation made conditional on provision of security Enforceability Held, CLB shall decide matters afresh Directions to make deposit given by High Court subject to decision of CLB - Contract Act, 1872 S. 27- Specific Relief Act, 1963 Ss. 14 and 41 - Corporate Laws Companies Act, 1956-Ss. 283 and 284

Research Gap

i) The judgment does not explain that can a Specific Relief under the Specific Relief Act, 1963 enforced for restrictive covenants in employment contract violated S.27 of the Indian contract Act.

Intended Research

i) The researcher will conduct research on Specific Relief under the Specific Relief Act, 1963 can be enforced for restrictive covenants in employment contract.

3. Rationale of Study

Employment contracts are an advanced form of contracts that have given rise to new issues and challenges since no formal study on the employment contract has been conducted. Corporates, companies, and the organized sector constantly throw challenges regarding the enforceability of the employment contract. Companies often include negative covenants like non-compete, non-disclosure, and non-solicitation clauses in employment contracts to protect their business interests, proprietary information, and client relationships. These clauses are designed to safeguard the company's competitive advantage, trade secrets, and confidential information from being exploited or shared with competitors, both during and after an employee's tenure with the company. Negative covenants are a type of contractual agreement or clause that restricts certain actions or activities of one or more

parties. These covenants are typically found not only in employment contracts but also in loan agreements, bond indentures, and other financial contracts to protect the interests of stakeholders. Negative covenants fundamentally are instruments to reduce risks and give the assurance that the employee will protect the employer's interests not only during the time of the contract but also after it ends.

Negative covariates in employment contracts are instrumental in achieving various important goals that benefit both employers and employees. Such provisions assist in setting the rights and obligations of the parties and support the parties' interests both during and after the employment relationship. The importance of negative covariants in employment contracts is also to a great extent for the protection of intellectual property and trade secrets, in that such provisions prohibit employees from rapid employment in a rival company or starting a competing business immediately after quitting, restrict employees from attracting clients or customers from the former employer, keep employees from leaving the company during the period of training so that the company can reap the benefits of the training provided, as well as prevent the company's secrets and strategies from becoming exposed and thus the company losing its competitive market position.

Striking a good balance with negative covenants is very important. They should not be so excessively restrictive or unreasonable as to unethically impede the career development of an employee, in which case they could be found unenforceable by courts and lead to non-enforcement as well as financial losses for the employer, who would thereby be limited in the global competitive market. Proper negative covenants need a lot of care in drafting the right mix of business necessity and employee rights and opportunities. These clauses' enforceability might be quite different depending on the laws and how courts interpret them. In general, the negative covenants in employment agreements, which mostly relate to the formal organized sector, are typical contracts with several articles that lead to various problems. The employer has to spend a large sum of money and a lot of time on the skill

development programs and training for the employee, and to get back the money invested in these programs, the employer and the employee sign an employment bond in which the employer is offered the guarantee of the period of service in which he can get the desired outcome. The employee gets the skills that will accompany him throughout his life, but if an employee breaks the employment bond or any other negative covenants, then the employer will not be able to perform the bond as per Section 27 of The Indian Contract Act 1872, which defines it as a void term, while the law and the court interpretation are still unclear.

In the globalization world, a huge part of the business and economy is dependent on the data that has been created by the employer over years and the skills developed in key managerial persons running the company. To safeguard the interests of the employer and the business, the employer enters into Non-disclosure and Non-soliciting clauses with its employees, but there is no protection and mechanism provided by any individual statute or The Indian Contract Act 1872 to execute these negative covenants in contracts. The employer wastes years and money to develop products, mechanisms, or technologies to manufacture products, but during the course of employment, the employee takes the information and starts a business in the same line as a competitor with the same product. Hence, to protect the interests of the employer and its resources, employers enter into Non-disclosure and Non-Soliciting agreements, but the interpretation of Section 27 of the Indian Contract Act 1872 almost makes it a void term, and the rights of the employer are hampered by not having proper protection of the law or not being protected by any specific law or rules attached to it. The primary problem with the enforceability of negative covenants in India is the challenge of maintaining a balance between safeguarding the employer's legitimate interests and providing the employees' rights and career scope. Indian judiciary has been wary while deciding these issues and has turned down the request for enforcement of restrictive covenants, which contain a grant that violates the subject's human right to subsistence, on the ground of restraint

of trade, while at the same time, there is no proper understanding of the position of Section 27 of The Indian Contract Act, which does not explicitly define the enforcement of negative covates.

A company like India with a massive employment sector, that employs 6% of the workforce but contributes a substantial 55% to the GDP, negative covenants such as non-compete, non-disclosure, and non-solicitation agreements are the standard features of employment contracts. As a result of the globalization of trade and business, the changes in international trade, business, the presence of multinationals doing business in India and Indian-origin companies that keep recruiting highly skilled people, training employees, and competing at the global level have made it necessary to have a law that systematizes terms and conditions that are accepted worldwide. However, away from the global standard, the enforceability of negative covenants in employment contracts is a significant issue in India. While such clauses are commonly included in employment agreements to protect employers' interests, they are subject to legal restrictions and scrutiny under Indian law. The Indian Contract Act, 1872, governs the enforceability of contracts, including those with negative covenants. Comparing our legal statutes with countries like the United Kingdom, the United States of America, and Australia, it is comparatively legal to execute negative covenants in employment contracts. It is the need of the current Indian Employment scenario to amend The Indian Contract Act, 1872, and other relevant laws which enable enforcement of negative covenants.

4. Research Questions

4.1 How negative covenants in employment contract evolved over the period of time?

4.2 What are the reasons for employers and employees to include negative covenants and what challenges do employers and

employees encounter when creating and drafting negative covenants in employment contracts?

4.3 Whether the current legal framework in India is adequate to address the issues and concerns relating to enforcement of negative covenants in employment contract in India?

4.4 What is the scope and extent of the enforceability of the negative covenants in employment contract in India?

4.5 What is the legal framework applicable to the enforcement of negative covenants in employment contracts in the United Kingdom, the United States of America, and Australia?

4.6 How can the present laws in India be amended and developed through possible suggestions that can be carried forward?

5. Statement of Problem

Employment contract is not new to the world, trade, activity and the economy take shape into the new dynamics over the years which give birth to new form of employment contracts. The changes and evolution in employment contract is constant as result of the constant changes in the rights and liabilities arising out of the employment contract between the employee and employer. These vicissitudes have brought new issues related to specific performance of negative covenants in employment contract that require to be addressed through a proper regulatory regime in India.

Firstly, there are lees number of study regarding to the employment contract in organised employment sector which employing 6% of the workforce but producing a significant 55% of the GDP. The study on their employment issue can potentially impact the GDP in positive way and lives of employer and employees. There are many concern in this sector but one the common concern is the law governing employment negative covenant in employment contract is not adequate to fulfil the need created by this demand of employment. Till date, there is no substantive legal research in India which

has been done in to find out how the negative covenants in employment contract is evolved over the period of time.

Secondly, The back born of this industrial growth is organised sector, where employees are employed though written employment contract with negative and positive covenants, but when it come to the negative covenants there is no substantial study to examine that why there is a prima facie need of negative covenants in employment contract, the study is necessary to find out why employee agrees for the negative covenants in employment contract and why employer in each employment contract keep negative covenants in employment contract .

Thirdly, The employee for the development of skill and salary payment then previous employment and employer for the future encashment of invested his money in development of unskilled employee enter into the employment contract, whereas while drafting and forming of the contract the employers need to ensure that terms and condition pass test of reasonableness, terms and condition can be different for different type of role and employee, the need and the amount of damages which can be recovered, on the other hand employee force to exclude few of the clauses as they feel negative covenants may limit their professional options after leaving a company, Employees may find negative covenants ambiguous or unclear and due to negotiation power or the legal cost to defend the suit. The study should be carried on to know type and intensity of the problems which are faced by the employer and employee in drafting and forming of the negative covenants in employment contract to find out the possible solution possibly in form of the applicability of some standard negative covenants similar to modal standing orders.

Fourthly, The negative covenants in employment contract are formed for the mutual benefit of both employee and employer, but Section 27 of the Contract Act 1872 makes every agreement by which anyone is restrained from carrying on a lawful avocation, trade or business of any kind, to that extent void, also legal position for the recovery of the damages under the section 73 and 74 the Contract Act 1872 is also unclear whereas The interconnection of the section 27 and validity the Specific Relief (Amendment) Act for negative

covenant is unclear, above all the case laws till date also has different of opinion, the criteria of reasonableness and during and post-employment scenario. There is need of an examination via study on which area in legal framework governing negative covenants in employment contract is inadequate to address the need of employer and employee.

Fifthly, the legal framework related to the employment contract is the matrix of application of the multiple laws and the adjudicating authorities like conciliation officer, labour court, civil court, arbitration etc. These multiple authorities have been entrusted with powers to execute these employment contract which has resulted into unsatisfactory and lengthy legal battle between the employer and employee due to lack of clarity when it comes to enforcement of negative covenants in employment contract. The existing frame work related to laws governing the employment contract in India is inspired by the British legal system. Companies, corporates, MNCs who are the main stakeholder in forming of the employment contract with negative covenants, the said contract with negative covenants, which is in synchronisation with the international framework fails to be executed in India. The present case laws are also not certain regarding the validity of the negative covenants in India and its enforcement, a study must be carried out to find out the possible way of execution of the negative covenants in employment contract in India.

Lastly, The globalisation of the world lead to competitive business and for the protection of its business in competition, the employer to protections of Intellectual Property, trade secret, skills, data, confidentiality, keep negative covenants in employment contract with employee , whereas many countries allows execution of the negative covenants in employment contract but India in many way restrict the enforcement of negative covenants in employment contract, whereas study to understand the diverse legal perspectives and cultural nuances influencing contract law in these nations helps identify potential areas of conflict or ambiguity in the enforcement of restrictive covenants, enabling companies to implement effective risk mitigation strategies. This, in turn, ensures a stable and harmonious business

environment, fostering investor confidence and economic growth. A comparative analysis of these countries' legal systems sheds light on best practices and precedents, guiding lawmakers and judicial bodies towards progressive and just regulations. This contributes to a fair and balanced approach in resolving disputes between employers and employees. Overall, a thorough examination of the legal frameworks concerning negative covenants in employment contracts across the UK, USA, and Australia offers a comprehensive understanding of global employment practices, ensuring a cohesive and equitable landscape for both employers and employees in an increasingly interconnected world.

6. Hypothesis

The general hypothesis of this research are:

6.1 The enforcement of negative covenants agreed to in employment contracts in Indian courts is significantly undermined by Section 27 of the Indian Contract Act, resulting in limited legal efficacy and practical enforcement challenges for employers.

6.2 Existing laws, rules and regulations of laws in India are inadequate to address the emerging disputes in Negative Covenants in Employment Contract and their Enforcement.

6.3 A specific statute or amendment in relation to Negative Covenants in Employment Contract and their enforcement is required to address the issues and challenges of the employment contract in India.

7. Object of the Study

The objectives of study include

- To highlight the significance of negative covenants in employment contracts and their enforceability.
- To investigate and comprehend how negative covenants are formulated and executed in employment contracts.
- To adopt a legal perspective in order to understand the challenges faced by employees and employers concerning negative covenants in employment contracts and their enforcement.
- To analyse the current legal framework in India concerning negative covenants in employment contracts and their enforcement.
- To conduct a comprehensive study on negative covenants in employment contracts and their enforcement, including a comparative analysis with the legal systems of the United Kingdom, the United States of America, and Australia.
- To examine and propose solutions for the gaps present in the current laws regarding negative covenants in employment contracts and their specific performance.

8. Scope and Delimitation of the Study

With the academic study limited in the area of employment contracts in organised sector, the research focuses on the issues and concerns related to negative covenant employment contracts and emphasis on the need for specific amendment or enactment in the form of an Act or rules when compared with other legislations recorded in other countries.

The limitations include the accession and reliability on online sources including articles and journals since the concept itself is new to India. The research would mainly focus on the aspects of employment contract with The Indian Contract Act 1872 and other Labour Laws of India in organised sector.

9. Scheme of the Study

1. Introduction
2. Analysis of Negative Covenants in Employment contract
3. Section 27 of the Indian Contract Act: Impact and Interpretation
4. Negative Covenants in Employment Contract: Comparative study International and Indian Regime
5. Observations from Empirical Research
6. Conclusion and Suggestions

10. Methodology

The research methodology has mixed approach- doctrinal and non-doctrinal. The methods employed for this study are descriptive, critical and analytical. Descriptive method is employed to explain the concept and legal principles of negative covenants in employment contract and to highlight the existing problems in employment contract. Analytical method would be employed to analyse the legal principles of other legal systems in regulating employment contract. A critical study of regulation on employment contract in India would be conducted to bring in an effective amendments in India.

The data collection method for the non-doctrinal study shall consist of questionnaire, which would in turn consist of open ended as well as close ended questions where the population would be the stakeholders in

employment contract including employee and employer, individuals, business organisations as well as labour contractor.

For the study, the sources are primary and secondary consisting inter alia of central legislations, state legislation , government reports, commentaries, journals, working and consultation papers and research articles. Employment Contract being relatively unexplored avenue of research, the researcher would be carrying an exploratory study relying on institutional and academic research reports, government press releases, internet sources and newspaper reports to substantiate the recent developments in the given area.

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